

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour

\_\_\_\_\_  
In the Matter of )  
 )  
 )  
 GENCORP INC., )  
 a corporation. )  
 )  
 )  
 )  
\_\_\_\_\_ )

Docket No. C-4099  
ORDER TO HOLD SEPARATE  
AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent GenCorp Inc. (“GenCorp”) of certain assets of Atlantic Research Corporation (“ARC”), a subsidiary of Sequa Corporation, and Respondent having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Agreement Containing Consent Orders and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent GenCorp is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Highway 50 and Aerojet Road, Rancho Cordova, CA 95670.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in this Hold Separate, the following definitions and provisions shall apply:

- A. “GenCorp” or “Respondent” means GenCorp Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by GenCorp, including but not limited to Aerojet-General Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Acquirer” has the same definition as the term does in the Decision and Order.
- C. “Acquisition” means the proposed acquisition of certain assets of ARC by GenCorp, as described in the Purchase Agreement by and between Atlantic Research Corporation and Aerojet-General Corporation dated May 2, 2003, and as amended August 29, 2003.
- D. “ARC” means Atlantic Research Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5945 Wellington Road, Gainesville, VA 20155, and its subsidiaries, divisions, groups and affiliates controlled by ARC, including, but not limited to, ARC UK Limited (“ARC-UK”).
- E. “ARC In-Space Liquid Propulsion Business” or “Business” means the ARC and ARC-UK business engaged in the research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale, or service of In-Space Liquid Propulsion Products.
- F. “ARC In-Space Liquid Propulsion Business Employees” means all full-time, part-time, or contract employees whose duties primarily relate to the Business or have primarily related to the Business at any time during the period commencing

twelve months prior to the Effective Date of Divestiture.

- G. “ARC In-Space Liquid Propulsion Business Key Employees” means those ARC In-Space Liquid Propulsion Business Employees identified in Confidential Appendix A attached hereto.
- H. “ARC In-Space Liquid Propulsion Hold Separate Employees” means all full-time, part-time, or contract employees whose duties primarily relate to the Business during the Hold Separate Period.
- I. "Commission" means the Federal Trade Commission.
- J. “Decision and Order” means:
  - 1. until the issuance and service of a final Decision and Order by the Commission, the proposed Decision and Order contained in the Consent Agreement in this matter; and
  - 2. following the issuance and service of a final Decision and Order by the Commission, the final Decision and Order issued by the Commission.
- K. “Effective Date of Divestiture” means the date on which the divestiture required by the Decision and Order occurs.
- L. “Held Separate Business” means the ARC In-Space Liquid Propulsion Business and all ARC In-Space Liquid Propulsion Hold Separate Employees.
- M. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin as of the date the Acquisition occurs and terminate pursuant to Paragraph V hereof.
- N. “Hold Separate Trustee” means the individual appointed to act as the Hold Separate Trustee pursuant to Paragraph II.D. hereof.
- O. “In-Space Liquid Propulsion Products” means monopropellant, bipropellant and dual mode thrusters, systems thereof, and propellant tanks, for use on satellites and spacecraft.
- P. "Material Confidential Information" means competitively sensitive or proprietary information including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets; *provided, however*, Material Confidential Information does not include information in the public domain or independently known to a Person from sources other than the Person to which the information pertains.

- Q. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.

## II.

### **IT IS FURTHER ORDERED that:**

- A. During the Hold Separate Period, Respondent shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondent shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Decision and Order, and all applicable laws.
- B. Respondent shall:
1. During the Hold Separate Period, take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Held Separate Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear; and
  2. From the date Respondent executes the Agreement containing Consent Orders until the Hold Separate Period begins, take such actions as are necessary to assure that ARC maintains the viability, marketability, and competitiveness of the Held Separate Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purpose of this Hold Separate is to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Material Confidential Information is exchanged between Respondent and the Held Separate Business, except in accordance with the provisions of this Hold Separate; and (3) prevent interim harm to competition pending the relevant divestiture and other relief.

- D. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
1. Charles L. Wilkins of KPMG LLP, shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Respondent and attached as Confidential Appendix B to this Hold Separate (“Trustee Agreement”).
    - a. The Trustee Agreement shall require that, no later than five (5) days after this Hold Separate becomes final, Respondent shall transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order.
    - b. No later than five (5) days after this Hold Separate becomes final, Respondent shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order.
    - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Respondent’s compliance with its obligations pursuant to this Hold Separate and the Decision and Order.
    - d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent’s compliance with this Hold Separate and the Decision

and Order or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.

- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.
- g. Respondent may require the Hold Separate Trustee to sign an appropriate confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his/her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Hold Separate becomes final, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the Held Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed substitute trustee. Respondent and the substitute Hold Separate Trustee shall execute a trustee agreement, subject to the approval of the Commission, consistent with this paragraph.

2. No later than one (1) day after the Acquisition is consummated, Respondent shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business to Robert A. Huebner (“Manager”).
  - a. In the event that Robert A. Huebner ceases to act as Manager, then Respondent shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers, and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate.
  - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondent. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate.
  - c. The Manager shall have no financial interests affected by Respondent’s revenues, profits or profit margins, except that the Manager’s compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate.
  - d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission.
  - e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove employees of the Held Separate Business and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the Hold Separate Trustee, may request Respondent to, and Respondent shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
  - f. In addition to ARC In-Space Liquid Propulsion Business Employees employed as of the date the Consent Agreement is signed by Respondent, the Manager may employ such Persons as

are reasonably necessary to assist the Manager in managing the Held Separate Business.

- g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondent shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate.
3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability, marketability, and competitiveness of the Held Separate Business. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with Persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. In connection with support services not included within the Held Separate Business that are being provided by Respondent or ARC or which Respondent or ARC has contracted to provide to the Held Separate Business by third parties, Respondent shall continue to provide or contract to provide, or offer to provide or contract to provide, the same support services to the Held Separate Business as are being provided to the Held Separate Business by Respondent, ARC, or third parties as of the date the Consent Agreement is signed by Respondent. For services that Respondent or ARC previously provided to the Held Separate Business, Respondent may charge the same fees, if any, charged by Respondent or ARC for such support services as of the date the Consent Agreement is signed by Respondent. For any other services or products that Respondent may provide the Held Separate Business, Respondent may charge no more than the same price it charges others for the same services or products. Respondent's personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such Persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any Person whose employment relates to any of Respondent's businesses, other than the Held Separate Business. Such personnel who have or may have access to Material Confidential Information shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business.

- a. Respondent shall offer to the Held Separate Business any services that Respondent provides to its other businesses directly or through third party contracts, or that it or ARC has provided directly or through third party contracts to the ARC In-Space Liquid Propulsion Business at any time since January 1, 2002. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondent. The services that Respondent shall offer the Held Separate Business shall include, but shall not be limited to, the following:
    - (1) federal and state regulatory policy development and compliance;
    - (2) human resources and administrative services, including, but not limited to, procurement and administration of employee benefits;
    - (3) environmental health and safety services, including, but not limited to, services to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
    - (4) financial accounting services;
    - (5) preparation of tax returns;
    - (6) audit services;
    - (7) technical support and engineering services;
    - (8) information technology support services;
    - (9) processing of accounts payable and accounts receivable;
    - (10) billing and collection services;
    - (11) payroll processing;
    - (12) security clearance services;
    - (13) compliance with import and export controls;
    - (14) procurement of insurance, including, but not limited to, general and product liability insurance; and
    - (15) legal services.
  - b. The Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products, including, but not limited to, those listed in Paragraph II.D.4.a. above, from third parties unaffiliated with Respondent.
5. Respondent shall cause the Hold Separate Trustee, the Manager, and each employee of the Held Separate Business having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms

and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such individuals shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing, directly or indirectly, any such information to or with any other Person whose employment relates to any of Respondent's businesses other than the Held Separate Business. These individuals shall not be involved in any way in the management, research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale, service, or financial operations of Respondent's In-Space Liquid Propulsion Products that compete with products or services of the Held Separate Business.

6. No later than ten (10) days after the date this Hold Separate becomes final, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate.
7. No later than five (5) days after the date this Hold Separate becomes final, Respondent shall circulate to employees of the Held Separate Business and to Respondent's employees who are responsible for the management, research, design, development, manufacture, fabrication, assembly, marketing, distribution, sale, service, or financial operations of In-Space Liquid Propulsion Products, a notice of this Hold Separate and Consent Agreement, in the form attached hereto as Attachment A.
8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Respondent shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts or omissions, or bad faith by the Hold Separate Trustee or the Manager, or their respective agents.

10. Respondent shall provide the Held Separate Business with sufficient financial resources:
- a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business at no less than current rates of operation and at no less than the rates of operation projected in the ARC Propulsion Division CY 03 Annual Operating Plan dated December 9, 2002 (“ARC 2003 Operating Plan”);
  - b. to perform all reasonable maintenance to, and replacements of, the assets of the Held Separate Business;
  - c. to carry on existing and planned capital projects and business plans for the Held Separate Business at levels no less than the levels reflected in the ARC 2003 Operating Plan;
  - d. to carry on existing and planned bid and proposal and research and development plans at levels no less than the levels reflected in the ARC 2003 Operating Plan; and
  - e. to maintain the viability, marketability, and competitiveness of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order, the Manager may substitute any capital or research and development project for another of the same cost.

11. Respondent shall:
- a. not later than forty-five (45) days before the Effective Date of Divestiture, (a) provide to the Acquirer a list of all ARC In-Space Liquid Propulsion Business Employees and ARC In-Space Liquid Propulsion Business Key Employees; (b) allow the Acquirer to interview any ARC In-Space Liquid Propulsion Business Employees; and (c) in compliance with all laws, allow the Acquirer to inspect the personnel files and other documentation relating to such ARC In-Space Liquid Propulsion Business Employees;
  - b. not later than thirty (30) days before the Effective Date of Divestiture, provide an opportunity for the Acquirer, (a) to meet

personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or more of the ARC In-Space Liquid Propulsion Business Employees; and (b) to make offers of employment to any one or more of the ARC In-Space Liquid Propulsion Business Employees;

- c. not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the ARC In-Space Liquid Propulsion Business Employees, not directly or indirectly attempt to persuade any one or more of the ARC In-Space Liquid Propulsion Business Employees to decline any offer of employment from the Acquirer, and not offer any incentive to any ARC In-Space Liquid Propulsion Business Employees to decline employment with the Acquirer;
- d. irrevocably waive any legal or equitable right to deter any ARC In-Space Liquid Propulsion Business Employee from accepting employment with the Acquirer, including, but not limited to, waiving any non-compete or confidentiality provisions of employment or other contracts with Respondent that relate to In-Space Liquid Propulsion Products;
- e. not interfere with the employment by the Acquirer of any ARC In-Space Liquid Propulsion Business Employee;
- f. continue employee benefits to ARC In-Space Liquid Propulsion Hold Separate Employees until the Effective Date of Divestiture consistent with the requirements of the Purchase Agreement by and between Atlantic Research Corporation and Aerojet-General Corporation dated May 2, 2003, and as amended August 29, 2003, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of all pension benefits, and reimbursement of relocation expenses; and
- g. provide a retention incentive bonus to ARC In-Space Liquid Propulsion Business Key Employees, who accept employment with the Commission-approved Acquirer, equal to ten (10) percent of such employee's annual salary under the following terms: (a) five (5) percent of the incentive to be paid upon the employee's completion of six (6) months of continuous employment with the Commission-approved Acquirer after the Effective Date of Divestiture; and (b) the remaining five (5) percent to be paid upon the employee's completion of one (1) year of continuous

employment with the Commission-approved Acquirer after the Effective Date of Divestiture.

12. Subject to the provisions of Paragraph II.D.13. below, for a period of one (1) year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any ARC In-Space Liquid Propulsion Business Employees who have accepted offers of employment with the Acquirer to terminate their employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the individual's employment has been terminated by the Acquirer, (2) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondent hires employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this paragraph.
13. Notwithstanding the provisions of Paragraph II.D.12. above, for a period of six (6) months from the Effective Date of Divestiture, Respondent shall not employ or make offers of employment to any ARC In-Space Liquid Propulsion Business Employees who have accepted offers of employment with the Acquirer unless any such individual's employment has been terminated by the Acquirer.
14. Except for the Manager, employees of the Held Separate Business, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
15. Respondent's employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.D.4.) shall not receive, have access to, or use or continue to use any Material Confidential Information of the Held Separate Business except:
  - a. as required by law; and
  - b. to the extent that necessary information is exchanged:
    - (1) in the course of consummating the Acquisition;
    - (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;

- (3) in complying with the Hold Separate or the Consent Agreement;
- (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the financial controls of the Held Separate Business;
- (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
- (6) in obtaining legal advice.

Nor shall the Manager or employees of the Held Separate Business receive, have access to, or use or continue to use, any Material Confidential Information about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondent may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondent to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this paragraph shall be used only for the purposes set forth in this paragraph.

16. Respondent and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate.

### **III.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Hold Separate.

#### IV.

**IT IS FURTHER ORDERED** that for the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, Respondent shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondent relating to compliance with this Hold Separate; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

V.

**IT IS FURTHER ORDERED** that this Hold Separate shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the divestiture required by the Decision and Order is completed.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED: October 14, 2003

## ATTACHMENT A

### NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

GenCorp Inc., hereinafter referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets and other relief.

As used herein, the term “Held Separate Business” means the ARC In-Space Liquid Propulsion Business and personnel as defined in Paragraph I.L. of the Order to Hold Separate and Maintain Assets (the “Hold Separate Order”) contained in the Consent Agreement. Under the terms of the Decision and Order contained in the Consent Agreement, Respondent must divest certain assets, which are included within the Held Separate Business, within six (6) months of the date the acquisition by GenCorp of certain assets of Atlantic Research Corporation from Sequa Corporation is consummated.

During the Hold Separate Period (which begins after the Hold Separate Order becomes final and ends after Respondent has completed the required divestiture), the Held Separate Business shall be held separate, apart, and independent of Respondent’s businesses. The Held Separate Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of Respondent, until Respondent has completed the required divestiture. All competitive information relating to the Held Separate Business must be retained and maintained by the persons involved in the operation of the Held Separate Business on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other of Respondent’s businesses, except as otherwise provided in the Hold Separate Order. These persons involved in the operation of the Held Separate Business shall not be involved in any way in the management, production, distribution, sales, marketing, or financial operations of Respondent relating to competing products. Similarly, persons involved in similar activities in Respondent’s businesses shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Held Separate Business, except as otherwise provided in the Hold Separate Order.

Until the Held Separate Business is divested, Respondent must take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Held Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

Any violation of the Consent Agreement may subject Respondent to civil penalties and other relief as provided by law.

**Confidential Appendices A and B**

**[Redacted from Public Record Version]**